

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES REX ELLIOTT,

Plaintiff,

vs.

JPMORGAN CHASE BANK, N.A. et al.,

Defendants.

3:11-cv-00826-RCJ-VPC

ORDER

This is a standard foreclosure case involving one property. Pending before the Court is a motion for summary judgment. For the reasons given herein, the Court grants the motion.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff James Rex Elliott gave a purchase money mortgage to Washington Mutual Bank, F.A. ("WaMu") in the amount of \$240,000 secured by the real property at 2280 Silky Sullivan Lane in Reno, Nevada. After Plaintiff defaulted, the original trustee, California Reconveyance Co. ("CRC") filed a notice of default.

Plaintiff sued Defendants in state court for wrongful foreclosure, seeking declaratory and injunctive relief. Defendants removed and moved to dismiss. The Court dismissed except insofar as the claim could be interpreted as one for statutorily defective foreclosure, because Plaintiff had sufficiently alleged that CRC failed to mail him a mediation request form pursuant to Nevada Revised Statutes section 107.086(2)(a)(3)–(4). Defendants have now moved for

1 summary judgment.

2 **II. LEGAL STANDARDS**

3 A court must grant summary judgment when “the movant shows that there is no genuine
4 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
5 Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *See Anderson v.*
6 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there
7 is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *See id.* A
8 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
9 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). In determining summary
10 judgment, a court uses a burden-shifting scheme:

11 When the party moving for summary judgment would bear the burden of proof at
12 trial, it must come forward with evidence which would entitle it to a directed verdict
13 if the evidence went uncontroverted at trial. In such a case, the moving party has the
initial burden of establishing the absence of a genuine issue of fact on each issue
material to its case.

14 *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations
15 and internal quotation marks omitted). In contrast, when the nonmoving party bears the burden
16 of proving the claim or defense, the moving party can meet its burden in two ways: (1) by
17 presenting evidence to negate an essential element of the nonmoving party’s case; or (2) by
18 demonstrating that the nonmoving party failed to make a showing sufficient to establish an
19 element essential to that party’s case on which that party will bear the burden of proof at trial. *See*
20 *Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial burden, summary
21 judgment must be denied and the court need not consider the nonmoving party’s evidence. *See*
22 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

23 If the moving party meets its initial burden, the burden then shifts to the opposing party to
24 establish a genuine issue of material fact. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
25 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing party

1 need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
2 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
3 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
4 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid summary judgment
5 by relying solely on conclusory allegations that are unsupported by factual data. *See Taylor v.*
6 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions
7 and allegations of the pleadings and set forth specific facts by producing competent evidence that
8 shows a genuine issue for trial. *See Fed. R. Civ. P. 56(e); Celotex Corp.*, 477 U.S. at 324.

9 At the summary judgment stage, a court’s function is not to weigh the evidence and
10 determine the truth, but to determine whether there is a genuine issue for trial. *See Anderson*, 477
11 U.S. at 249. The evidence of the nonmovant is “to be believed, and all justifiable inferences are
12 to be drawn in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely
13 colorable or is not significantly probative, summary judgment may be granted. *See id.* at 249–50.

14 **III. ANALYSIS**

15 Defendants attach the affidavit of Huey-Jen Chiu, Vice President of CRC, with personal
16 knowledge of the relevant facts. (*See Chiu Aff.* ¶ 1, Apr. 12, 2012, ECF No. 29-1). Chiu attests
17 to the authenticity of Exhibits 1 and 3 to the affidavit, which documents are business records of
18 CRC, both of which were sent to Plaintiff. (*See id.* ¶ 6–8). Exhibit 1 is an affidavit of mailing of
19 the notice of default, FMP Form #8 (a Housing Affordability Worksheet Form), an FMP
20 Election/Waiver of Mediation Form and instructions, and a flyer concerning the FMP. (*See id.*,
21 Ex. 1). Defendants having met their initial burden, and Plaintiff having produced no contrary
22 evidence (Plaintiff has not responded), the Court grants the motion.

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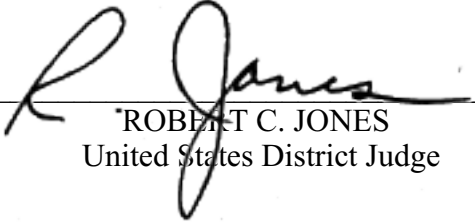
CONCLUSION

IT IS HEREBY ORDERED that the Motion for Summary Judgment (ECF No. 29) is GRANTED.

IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

IT IS SO ORDERED.

Dated this 2nd day of October, 2012.



*ROBERT C. JONES
United States District Judge